

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANTHONY FRATTIN on behalf of himself
and others similarly situated,

Plaintiff,

v.

WEST 44TH STREET RESTAURANT
LLC, d/b/a KELLARI TAVERNA,
STAVROS AKTIPIS, and HARSHAD
SHAH,

Defendants.

Case No. 07 CV 3383 (PAC)

**ANSWER TO FIRST
AMENDED COMPLAINT**

Defendant West 44th Street Restaurant LLC, d/b/a Kalleri Taverna (“Defendant” or “West 44th Street”) by and through its undersigned counsel, files its Answer to Plaintiff’s First Amended Complaint (“Amended Complaint”) as follows:

1. Defendant lacks sufficient knowledge or information to admit or deny the allegation set forth in Paragraph “1” of the Amended Complaint.

AS AND FOR JURISDICTION AND VENUE

2. Paragraph “2” of the Amended Complaint sets forth a legal conclusion only, and therefore no response is required. To the extent a response is required, Defendant denies the allegations set forth in Paragraph “2” of the Amended Complaint, except admits that Plaintiff purports to invoke the jurisdiction of the Court as set forth in this paragraph.

3. Paragraph “3” of the Amended Complaint sets forth a legal conclusion only, and therefore no response is required. To the extent a response is required, Defendant denies the allegations set forth in Paragraph “3” of the Amended Complaint, except admits that Defendant conduct business in the District and its principal offices are in the District.

AS AND FOR THE PARTIES

4. Defendant admits the allegations set forth in Paragraph “4” of the Amended Complaint.

5. Defendant denies the allegations set forth in Paragraph “5” of the Amended Complaint, except admits that Stavros Aktipis is an owner of Kellari Taverna.

6. Defendant denies the allegations set forth in Paragraph “6” of the Amended Complaint, except admits that Harshad Shah is an owner of Kellari Taverna.

7. Defendant denies the allegations set forth in Paragraph “7” of the Amended Complaint.

8. Defendant lacks sufficient knowledge or information to admit or deny the allegations set forth in Paragraph “8” of the Amended Complaint, except avers that Anthony Frattin was employed beginning in October of 2006.

AS AND FOR THE ALLEGATIONS

9. Defendant denies the allegations set forth in Paragraph “9” of the Amended Complaint, except admits that Plaintiffs purport to proceed as set forth in Paragraph “9” of the Amended Complaint.

10. Defendant denies the allegations set forth in Paragraph “10” of the Amended Complaint.

11. Defendant denies the allegations set forth in Paragraph “11” of the Amended Complaint.

AS AND FOR THE RULE 23 CLASS ALLEGATIONS – NEW YORK

12. Defendant denies the allegations set forth in Paragraph “12” of the Amended Complaint.

13. Defendant denies the allegations set forth in Paragraph “13” of the

Amended Complaint.

14. Defendant denies the allegations set forth in Paragraph “14” of the Amended Complaint.

15. Defendant denies the allegations set forth in Paragraph “15” of the Amended Complaint.

16. Defendant denies the allegations set forth in Paragraph “16” of the Amended Complaint.

17. Defendant denies the allegations set forth in Paragraph “17” of the Amended Complaint.

18. Defendant denies the allegations set forth in Paragraph “18” of the Amended Complaint.

19. Defendant denies the allegations set forth in Paragraph “19” of the Amended Complaint.

20. Defendant denies the allegations set forth in Paragraph “19a” of the Amended Complaint.

21. Defendant denies the allegations set forth in Paragraph “19b” of the Amended Complaint.

22. Defendant denies the allegations set forth in Paragraph “19c” of the Amended Complaint.

23. Defendant denies the allegations set forth in Paragraph “19d” of the Amended Complaint.

24. Defendant denies the allegations set forth in Paragraph “19e” of the Amended Complaint.

25. Defendant denies the allegations set forth in Paragraph “19f” of the Amended Complaint.

26. Defendant denies the allegations set forth in Paragraph “19g” of the Amended Complaint.

27. Defendant denies the allegations set forth in Paragraph “19h” of the Amended Complaint.

28. Defendant denies the allegations set forth in Paragraph “19i” of the Amended Complaint.

29. Defendant denies the allegations set forth in Paragraph “19j” of the Amended Complaint.

30. Defendant denies the allegations set forth in Paragraph “19k” of the Amended Complaint.

31. Defendant denies the allegations set forth in Paragraph “19l” of the Amended Complaint.

AS AND FOR THE FACTS

32. Defendant denies the allegations set forth in Paragraph “20” of the Amended Complaint, except avers that a written consent for the Plaintiff is alleged to be attached as Exhibit “A” to the Amended Complaint.

33. Defendant denies the allegations set forth in Paragraph “21” of the Amended Complaint.

34. Defendant denies the allegations set forth in Paragraph “22” of the Amended Complaint.

35. Defendant denies the allegation set forth in Paragraph “23” of the Amended Complaint.

36. Defendant denies the allegation set forth in Paragraph "24" of the Amended Complaint.

37. Defendant denies the allegations set forth in Paragraph "25" of the Amended Complaint, except admits that Plaintiff used an electronic time clock.

38. Defendant denies the allegations set forth in Paragraph "26" of the Amended Complaint.

39. Defendant denies the allegation set forth in Paragraph "27" of the Amended Complaint.

40. Defendant denies the allegations set forth in Paragraph "28" of the Amended Complaint.

41. Defendant denies the allegation set forth in Paragraph "29" of the Amended Complaint.

42. Defendant denies the allegation set forth in Paragraph "30" of the Amended Complaint.

43. Paragraph "31" of the Amended Complaint calls for a legal answer, therefore no response is required. To the extent a response is required, Defendant denies the allegations set forth in Paragraph "31" of the Amended Complaint.

44. Paragraph "32" of the Amended Complaint calls for a legal answer, therefore no response is required. To the extent a response is required, Defendant denies the allegations set forth in Paragraph "32" of the Amended Complaint.

45. Defendant denies the allegation set forth in Paragraph "33" of the Amended Complaint.

46. Defendant denies the allegation set forth in Paragraph "34" of the

Amended Complaint.

47. Defendant denies the allegations set forth in Paragraph “35” of the Amended Complaint.

48. Defendant denies the allegations set forth in Paragraph “36” of the Amended Complaint.

49. Defendant denies the allegations set forth in Paragraph “37” of the Amended Complaint.

50. Defendant denies the allegations set forth in Paragraph “38” of the Amended Complaint.

51. Defendant lacks sufficient knowledge or information to admit or deny the allegation set forth in Paragraph “39” of the Amended Complaint.

52. Defendant denies the allegation set forth in Paragraph “40” of the Amended Complaint.

AS AND FOR THE FIRST CLAIM FOR RELIEF

53. In response to Paragraph “41” of the Amended Complaint, Defendant repeats and realleges each and every response to Paragraphs “1” through “40” of the Amended Complaint as if set forth fully herein.

54. Defendant denies the allegations set forth in Paragraph “42” of the Amended Complaint.

55. Defendant denies the allegations set forth in Paragraph “43” of the Amended Complaint.

56. Defendant denies the allegations set forth in Paragraph “44” of the Amended Complaint.

57. Defendant denies the allegation set forth in Paragraph “45” of the

Amended Complaint.

58. Defendant denies the allegations set forth in Paragraph “46” of the Amended Complaint.

AS AND FOR THE SECOND CLAIM FOR RELIEF

59. In response to Paragraph “47” of the Amended Complaint, Defendant repeats and realleges each and every response to Paragraphs “1” through “46” of the Amended Complaint as if set forth fully herein.

60. Defendant denies the allegations set forth in Paragraph “48” of the Amended Complaint.

61. Defendant denies the allegations set forth in Paragraph “49” of the Amended Complaint.

62. Defendant denies the allegations set forth in Paragraph “50” of the Amended Complaint.

63. Defendant denies the allegations set forth in Paragraph “51” of the Amended Complaint.

AS AND FOR THE THIRD CLAIM FOR RELIEF

64. In response to Paragraph “52” of the Amended Complaint, Defendant repeats and realleges each and every response to Paragraphs “1” through “51” of the Amended Complaint as if set forth fully herein.

65. Defendant denies the allegation set forth in Paragraph “53” of the Amended Complaint.

66. Defendant denies the allegation set forth in Paragraph “54” of the Amended Complaint.

67. Defendant denies the allegations set forth in Paragraph “55” of the

Amended Complaint.

68. Defendant denies the allegations set forth in Paragraph “56” of the Amended Complaint.

69. Paragraph “57” of the Amended Complaint sets forth a legal conclusion only, and therefore no response is required. To the extent that a response is required, Defendant denies the allegation set forth in Paragraph “57” of the Amended Complaint.

AS AND FOR THE FOURTH CLAIM FOR RELIEF

70. In response to Paragraph “58” of the Amended Complaint, Defendant repeats and realleges each and every response to Paragraphs “1” through “57” of the Amended Complaint as if set forth fully herein.

71. Defendant denies the allegations set forth in Paragraph “59” of the Amended Complaint.

72. Paragraph “60” of the Amended Complaint sets forth a legal conclusion only, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations set forth in Paragraph “60” of the Amended Complaint.

AS AND FOR THE FIFTH CLAIM FOR RELIEF

73. In response to Paragraph “61” of the Amended Complaint, Defendant repeats and realleges each and every response to Paragraphs “1” through “60” of the Amended Complaint as if set forth fully herein.

74. Paragraph “62” of the Amended Complaint calls for a legal answer, therefore no response is required. To the extent that a response is required, Defendant denies the allegations set forth in Paragraph “62” of the Amended Complaint.

75. Defendant denies the allegations set forth in Paragraph “63” of the Amended Complaint.

76. Paragraph “64” of the Amended Complaint sets forth a legal conclusion only, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations set forth in Paragraph “64” of the Amended Complaint.

AS AND FOR THE SIXTH CLAIM FOR RELIEF

77. In response to Paragraph “65” of the Amended Complaint, Defendant repeats and realleges each and every response to Paragraphs “1” through “64” of the Amended Complaint as if set forth fully herein.

78. Defendant denies the allegations set forth in Paragraph “66” of the Amended Complaint.

79. Defendant denies the allegations set forth in Paragraph “67” of the Amended Complaint.

80. Paragraph “68” of the Amended Complaint sets forth a legal conclusion only, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations set forth in Paragraph “68” of the Amended Complaint.

AS AND FOR THE SEVENTH CLAIM FOR RELIEF

81. In response to Paragraph “69” of the Amended Complaint, Defendant repeats and realleges each and every response to Paragraphs “1” through “68” of the Amended Complaint as if set forth fully herein.

82. Defendant denies the allegations set forth in Paragraph “70” of the Amended Complaint.

83. Defendant denies the allegations set forth in Paragraph “71” of the Amended Complaint.

84. Paragraph “72” of the Amended Complaint sets forth a legal conclusion only, and therefore no response is required. To the extent that a response is required, Defendant

denies the allegations set forth in Paragraph “72” of the Amended Complaint.

AS AND FOR THE EIGHTH CLAIM FOR RELIEF

85. In response to Paragraph “73” of the Amended Complaint, Defendant repeats and realleges each and every response to Paragraphs “1” through “72” of the Amended Complaint as if set forth fully herein.

86. Defendant denies the allegations set forth in Paragraph “74” of the Amended Complaint.

87. Defendant denies the allegations set forth in Paragraph “75” of the Amended Complaint.

88. Paragraph “76” of the Amended Complaint sets forth a legal conclusion only, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations set forth in Paragraph “76” of the Amended Complaint.

89. Defendant denies the allegations set forth in Paragraph “77” of the Amended Complaint.

90. Paragraph “78” of the Amended Complaint sets forth a legal conclusion only, and therefore no response is required. To the extent that a response is required, Defendant denies the allegations set forth in Paragraph “78” of the Amended Complaint.

AS AND FOR AFFIRMATIVE AND OTHER DEFENSES

Defendant asserts the following affirmative and other defenses without assuming any burden of production or proof that it would not otherwise have:

AS AND FOR A FIRST DEFENSE

Plaintiff fails to state a claim upon which relief may be granted, either on his own behalf or on behalf of those persons whom he purports to represent.

AS AND FOR A SECOND DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable limitations period.

AS AND FOR A THIRD DEFENSE

This case may not be maintained as a collective action because the named Plaintiff is not similarly-situated to or an otherwise adequate representative for the persons whom he purports to represent.

AS AND FOR A FOURTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by the de minimus doctrine.

AS AND FOR A FIFTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of laches, estoppel and waiver.

AS AND FOR A SIXTH DEFENSE

Defendant has at all times acted in good faith and had reasonable grounds for believing that its pay practices complied with the FLSA.

AS AND FOR A SEVENTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

AS AND FOR AN EIGHTH DEFENSE

Plaintiff is not entitled to liquidated damages under New York state law as this action is a class action.

AS AND FOR A NINTH DEFENSE

In addition to the foregoing defenses, Defendant retains the right to add additional affirmative defenses upon the close of discovery.

WHEREFORE, Defendant prays that the Court enter a judgment:

1. dismissing the Amended Complaint with prejudice;
2. granting Defendant its costs, including attorney's fees, incurred in this action; and
3. granting such other and further relief as the Court may deem just and proper

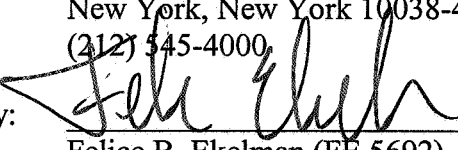
Respectfully submitted,

JACKSON LEWIS LLP

59 Maiden Lane
New York, New York 10038-4502
(212) 545-4000

Dated: May 13, 2007
New York, New York

By:

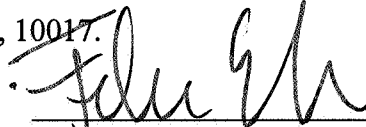


Felice B. Ekelman (FE 5692)
Richard I. Greenberg (RG 4911)

ATTORNEYS FOR DEFENDANT WEST 44th STREET
RESTAURANT LLC d/b/a KELLARI TAVERNA

CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2007, a true and correct copy of Defendant's Answer was served on Plaintiff Anthony Frattin, by placing said document in a properly addressed postage-paid envelope and causing it to be mailed by Federal Express Overnight Mail to Plaintiff's counsel of record, Charles E. Joseph, Esq., at Joseph & Herzfeld LLP, 757 Third Avenue, 25th Floor, New York, New York, 10017.



Felice B. Ekelman, Esq.